

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NATHEN BARTON,

Plaintiff,

v.

JOE DELFGAUW, *et al.*,

Defendants.

CASE NO. 3:21-cv-05610-JRC

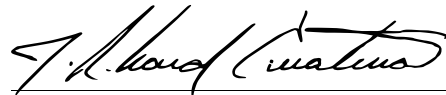
ORDER DENYING PLAINTIFF'S
MOTION TO DISMISS

This matter is before the Court on the parties' consent to proceed before a Magistrate Judge (Dkt. 38) and on plaintiff's motion to dismiss or for a more definite statement. Dkt. 44.

On August 23, 2021, plaintiff, proceeding *pro se*, filed this action asserting claims under the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.*, ("TCPA") and state law alleging several defendants communicated with him by telephone without his consent while his phone number was registered on the national Do-Not-Call Registry. Dkt. 1. Plaintiff seeks damages and treble damages under 47 U.S.C. § 277(b)(3), costs, and injunctive relief. *Id.* On November 9, 2021, defendant Starter Home Investing, Inc. ("Starter Home") filed an answer and

1 a counterclaim against plaintiff for fraud and fraud by non-disclosure. Dkt. 39. On November 9,
2 2021, plaintiff filed a motion to dismiss or for a more definite statement. Dkt. 44. Defendant
3 Starter Home did not respond to the motion to dismiss. Ordinarily, the Court may deem a party's
4 failure to oppose a motion as an admission that the motion has merit. *See* Local Civil Rule
5 7(b)(2). However, plaintiff previously filed an identical motion against another defendant in this
6 matter with identical counterclaims, which the Court denied. *See* Dkts. 20, 24, 45. Because the
7 counterclaims and arguments are the same in both motions, the Court denies plaintiff's current
8 motion for the same reasons it denied his first. Therefore, plaintiff's motion (Dkt. 44) is denied.

9 Dated this 21st day of December, 2021.

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13 J. Richard Creatura
14 Chief United States Magistrate Judge
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